



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 23193960

Date: DEC. 01, 2022

Appeal of Nebraska Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner, an information technology (IT) software development services company, seeks to temporarily employ the Beneficiary as a “software engineer” under the H-1B nonimmigrant classification for specialty occupations. Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the Nebraska Service Center denied the petition, concluding that the record does not establish that the proffered position qualifies as a specialty occupation. The matter is now before us on appeal. On appeal, the Petitioner resubmits the previously provided evidence and asserts that the proffered position qualifies as a specialty occupation.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *See Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

## **I. LEGAL FRAMEWORK**

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . . ” (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires “theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.” The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates section 214(i)(1) of the Act, but adds a non-exhaustive list of fields of endeavor. In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the

proffered position must meet one of four criteria to qualify as a specialty occupation position.<sup>1</sup> Lastly, 8 C.F.R. § 214.2(h)(4)(i)(A)(1) states that an H-1B classification may be granted to a foreign national who “will perform services in a specialty occupation . . .” (emphasis added).

Accordingly, to determine whether the Beneficiary will be employed in a specialty occupation, we look to the record to ascertain the services the Beneficiary will perform and whether such services require the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor’s degree or higher in a specific specialty or its equivalent. Without sufficient evidence regarding the duties the Beneficiary will perform, we are unable to determine whether the Beneficiary will be employed in an occupation that meets the statutory and regulatory definitions of a specialty occupation and a position that also satisfies at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The services the Beneficiary will perform in the position determine: (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. 8 C.F.R. § 214.2(h)(4)(iii)(A).

By regulation, the Director is charged with determining whether the petition involves a specialty occupation as defined in section 214(i)(1) of the Act. 8 C.F.R. § 214.2(h)(4)(i)(B)(2). The Director may request additional evidence in the course of making this determination. 8 C.F.R. § 103.2(b)(8). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

## II. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.<sup>2</sup> Specifically, the Petitioner has not established the substantive nature of the work the Beneficiary will perform, which precludes a conclusion that the proffered position satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The Petitioner, an IT software development company, located in Virginia, filed this petition for the Beneficiary to work as a software engineer from October 1, 2021, to September 30, 2024. The Petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that the Beneficiary will

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<sup>1</sup> 8 C.F.R. § 214.2(h)(4)(iii)(A) must be read with the statutory and regulatory definitions of a specialty occupation under section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). We construe the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”).

<sup>2</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position. While we may not discuss every document submitted, we have reviewed and considered each one.

work offsite. On the labor condition application (LCA)<sup>3</sup> submitted in support of the H-1B petition, the Petitioner identified [REDACTED] (the client) place of business in [REDACTED] Michigan, as the Beneficiary's work location. In its support letter, the Petitioner stated that the client has contracted the Beneficiary's services in the position offered, and per its agreement with the client, it expects the project to continue for the period requested on the petition as an end date has not been set. The Petitioner neither identified nor provided further details of a specific project with the client. Furthermore, the Petitioner did not provide a copy of the contract it has with the client.

In response to the Director's request for evidence, the Petitioner submitted a letter from the client, in which it stated that the work for the Beneficiary was arranged through "a series of contracts" with the Petitioner, and that the letter, while it confirms the Beneficiary's assignment, "does not alter or create any legal obligation" between the parties. The client also repeated, verbatim, the duties listed in the Petitioner's support letter. However, the client did not provide any information regarding its project to which the Beneficiary will be assigned.

Upon review, we observe that the record here does not include probative evidence of the substantive nature of the claimed work and does not establish that any such work will be H-1B caliber work. We review the actual duties the Beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task, we must analyze the actual duties in conjunction with specific work or project(s) to which the Beneficiary will be assigned. To allow otherwise results in generic descriptions of duties that, while they may appear (in some instances) to comprise the duties of a specialty occupation, are not related to any actual services the Beneficiary is expected to provide. Notably, neither the Petitioner nor the client identified a specific project to which the Beneficiary will be assigned and therefore, leaving the listed duties without a context. For example, the Petitioner stated that the Beneficiary will be "[i]nvolved in the analysis, design, development, and testing phases of Software Development Lifecycle (SDLC) using agile development methodology."<sup>4</sup> However, the Petitioner did not state to which software project the Beneficiary will be assigned, did not elaborate on the extent of the Beneficiary's involvement in the SDLC and did not explain the specific tasks associated with each stage of the SDLC in relation to a specific project. The Petitioner also stated that the Beneficiary will be "[i]nvolve[d] in enhancement and change request as a part of production support for the current application," but did not explain what the "current application" is, nor did it provide any details regarding the Beneficiary's specific role in "enhancement and change request" and tasks associated with such role in relation to a specific project. Here, the Petitioner has not provided sufficient details regarding the nature and scope of the Beneficiary's employment or any substantive evidence regarding the actual work that the Beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently probative and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty.

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<sup>3</sup> The Petitioner is required to submit a certified LCA to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the "area of employment" or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

<sup>4</sup> For the sake of brevity, we will not discuss each duty the Petitioner listed. However, we have reviewed and considered each one.

We also reviewed the position evaluation prepared by [ ] a professor at [ ] University, [ ] Minnesota, to assist in understanding the nature of the proffered position. The professor stated that he reviewed the Petitioner's support letter regarding its business and operations, the LCA, information regarding the Beneficiary's qualifications, as well as additional resources, such as the Petitioner's company website, in rendering his opinion. However, the professor did not discuss the Beneficiary's duties in relation to a specific project or that the Beneficiary works offsite for a client. The absence of any substantive discussion of the duties specific to the client's project raises doubts about his level of familiarity with the proffered position and also undermines his conclusion regarding the degree requirement of the position. We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.*

The Petitioner asserts that the position requires a bachelor's degree in computer science or the foreign equivalent, in an appropriate IT related field and claims that the Beneficiary is well qualified for the position and references his qualifications. However, the test to establish a position as a specialty occupation is not the credentials of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. In this matter, as we cannot determine the substantive nature of the position, we cannot properly evaluate what degree is required in order to perform the duties of the position. Accordingly, an analysis of the Beneficiary's qualifications in this matter is premature. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to be a specialty occupation. Absent a determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the particular position proffered here, it cannot be determined that the Beneficiary possesses the degree the position requires.

Without more specific and persuasive evidence regarding the nature of the proffered position's duties, the record lacks sufficient information to understand the nature of the actual proffered position and to determine that the duties require the theoretical and practical application of a body of highly specialized knowledge attained by a bachelor's degree, or higher, in a specific discipline.

The Petitioner has not established the substantive nature of the Beneficiary's work. Consequently, this precludes a conclusion that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.<sup>5</sup>

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<sup>5</sup> As the lack of probative evidence in the record precludes a conclusion that the proffered position is a specialty occupation and is dispositive of the appeal, we will not further discuss the Petitioner's assertions on appeal regarding the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

Accordingly, the appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.